

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.3253 OF 2004

South East Asia Marine Engineering
& Construction Ltd. and another Petitioner

versus

Union of India and another Respondents

Mr.E.P.Bharucha, Senior Counsel with B.Patel i/by
Mulla & Mulla, adv. for petitioner.

Mr.B.A.Desai, Additional Solicitor General with
Mr.H.V.Mehta & A.Sethna, adv. for respondents.

CORAM : H.L.GOKHALE AND
S.C.DHARMADHIKARI, JJ.

DATE : 25th January 2005

PC :

1. Heard Mr.Bharucha in support of this
petition. Mr.Desai, learned Additional Solicitor
General appears for respondents.

2. The petition seeks to challenge an order
passed by the Appellate Tribunal for Foreign
Exchange, dated 28th October 2004. This is an
order passed u/s 19 of the FEMA Act requiring the
petitioner to give an unconditional bank
guarantee of the penalty amount. Mr.Desai

submitted that firstly the petition is filed in wrong Court and secondly in any case remedy against the impugned order is to file an appeal and not a writ petition. That apart, on merits, it is submitted that it is a discretionary order and Court is not expected to interfere in it.

3. Mr.Bharucha submitted that petitioner is having a branch office in Mumbai and therefore this Court ought to entertain the writ petition. In his submission since the petitioner is having a branch office here, if it has to file an appeal, it would file the same here against the final order. Present order, in his submission, is one like interlocutory order, and hence the writ petition would be maintainable. He also submitted that the order of adjudication was not tenable on merits.

4. In the present case what we notice is that the registered office of the petitioner is in Kolkata. The impugned order is passed by the Appellate Tribunal which is situated in Delhi. The disputed transaction occurred at Kandla Port. In this view of the matter, this Court cannot be expected to exercise it's jurisdiction. That apart, the remedy for the petitioner is to file

an appeal u/s 35 of FEMA and not a writ petition. Over & above that the impugned order is completely a discretionary order. It is for the authority concerned to decide whether the penalty should be directed to be deposited or should be dispensed with in any manner. In the present case the appellate tribunal has been infact quite considerate to the petitioner. The department had insisted on deposit of the amount. The Tribunal has permitted giving of a bank guarantee. We do not think this is a matter where we interfere. Petition dismissed.

5. After this order is passed Mr.Bharucha makes a request that time to furnish bank guarantee be extended by four weeks. Mr.Desai, learned Additional Solicitor General opposes the prayer. Even so, we direct that the appeal will not stand dismissed if the bank guarantee is given within four weeks, say by end of March 2005.

(H.L.GOKHALE, J.)

(S.C.DHARMADHIKARI, J.)